

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SHAWN DRUMGOLD
Plaintiff,

v.

TIMOTHY CALLAHAN, FRANCIS M.
ROACHE, PAUL MURPHY, RICHARD
WALSH, and THE CITY OF BOSTON,
Defendants.

C.A. NO.: 04-11193NG

**DEFENDANTS' JOINT MOTION IN LIMINE TO EXCLUDE EVIDENCE
REGARDING RECORDED STATEMENT, GRAND JURY TESTIMONY
AND JUDICIAL DECISIONS IN UNDERLYING CRIMINAL PROCEEDINGS**

NOW COME the Defendants, Richard Walsh ("Walsh") and Timothy Callahan ("Callahan"), Francis M. Roache and the City of Boston (hereinafter collectively referred to as "Defendants"), and hereby move to preclude any evidence of or reference to: (1) the Plaintiff, Shawn Drumgold's ("Plaintiff"), recorded statement or any police conduct associated therewith; (2) Walsh's grand jury testimony; and (3) any judicial decisions in the underlying criminal proceedings, including but not limited to (i) Judge Volterra's May 18, 1989 decision granting Plaintiff's motion to suppress and denying Plaintiff's motion to dismiss, (ii) the July 18, 1996 decision of the Supreme Judicial Court, *Commonwealth v. Drumgold*, 423 Mass. 230, and (iii) the transcript of proceedings of November 6, 2003 wherein the Suffolk Superior Court granted Plaintiff's motion for a new trial. Additionally, Defendants request an order that Plaintiff himself or by way of counsel be precluded from referencing any of the foregoing during opening statements, examination of witnesses or closing arguments or in any other manner in the presence of the jury.

As grounds, Defendants state that all such evidence must be precluded because: (1) Plaintiff is barred by the doctrine of collateral estoppel and the applicable statute of limitations from recovery pursuant to 42 U.S.C. § 1983 for any alleged conduct with respect to his recorded statement and/or the grand jury proceedings; (2) there is no record evidence that Walsh was aware of the order not to interrogate Plaintiff; (3) not only is Walsh absolutely immune from liability for testifying before the grand jury, but the Supreme Judicial Court has found that Walsh's testimony before the grand jury was not of a constitutional magnitude; (4) pursuant to Fed. R. Evid. 404(b), evidence with respect to the recorded statements and grand jury proceedings is not admissible; (5) Callahan was not involved in the investigation until May 1989 and thus he was not involved at the time of Plaintiff's recorded statement or the grand jury proceedings; (6) the substantial risk of unfair prejudice to Walsh and Callahan outweighs any probative value that evidence with regard to the recorded statement and/or grand jury proceedings may have; and (7) pursuant to Fed. R. Evid. 403, 801 and 802 the judicial decisions rendered in the underlying criminal proceedings, particularly the findings of fact therein, are inadmissible and admission of any evidence thereof or reference thereto would result in unfair prejudice to Defendants.

In support of this motion, Defendants submit and incorporate herein by reference *Memorandum of Law in Support of Defendants' Joint Motion in Limine to Exclude Evidence Regarding Recorded Statement, Grand Jury Testimony and Judicial Decisions in Underlying Criminal Proceedings*.

WHEREFORE, the Defendants respectfully request that this Motion be granted, along with any further relief deemed fair and just.

Defendant,
RICHARD WALSH,
By his attorney,

/s/ Hugh R. Curran
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Defendant,
TIMOTHY CALLAHAN,
By his attorney,

/s/ Mary Jo Harris
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Defendants,
FRANCIS M. ROACHE and
THE CITY OF BOSTON,
By their attorneys,

/s/ John P. Roache
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DATED: January 28, 2008

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 28th day of January, 2008, I electronically filed with within document with the Clerk of the United States District Court for the District of Massachusetts, using the CM/ECF System. The following participants have received notice electronically:

For Plaintiff Shawn Drumgold,
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